

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,)	
)	
Plaintiff,)	
v.)	Civil Action No. 2:17-cv-04540 (WB)
)	
JOSEPH R. BIDEN, in his official capacity as President of the United States, <i>et al.</i> ,)	
)	
Defendants.)	
)	

STATUS REPORT

On August 2, 2021, the Court entered an order staying this case and instructing Federal Defendants to file a status report on or before October 29, 2021 and every 90 days thereafter. ECF No. 281. And on January 3, 2022, the Court issued an order directing that the case remain stayed and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283. Federal Defendants report the following:

1. This case involves a challenge to final rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court’s decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

3. The Court has before it fully briefed dispositive motions. *See, e.g.*, ECF Nos. 252, 254, 255.
4. On July 30, 2021, Federal Defendants filed a motion asking the Court to stay the case to permit them to evaluate the issues presented by this litigation, as well as their regulatory and policy options. ECF No. 279. The Court had previously granted two other similar motions made by Federal Defendants. *See* ECF Nos. 271, 275.
5. On August 2, 2021, the Court granted Federal Defendants' motion and entered an order staying the case. ECF No. 281. In that order, the Court also instructed Federal Defendants to file a "status report on or before October 29, 2021, and every 90 days thereafter." *Id.*
6. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act) (attached as Exh. 1).
7. On January 3, 2022, the Court issued an order directing that the case remain stayed and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283.
8. Federal Defendants filed their last status report at the end of January 2022. Federal Defendants reported that they had determined that they would be unable to meet their anticipated target to issue a notice of proposed rulemaking by mid-February 2022 for two reasons: (1) the agencies have limited resources and face many competing and extraordinary demands on those resources, particularly in light of the ongoing pandemic and public health emergency; and (2) the agencies continue to evaluate the

issues presented by this litigation, as well as their regulatory and policy options. ECF No. 284.

9. The Agencies continue to work toward rulemaking. But, as noted in the last status report, their progress is affected by (1) their resource limitations and competing demands on those resources, including the updating of guidance addressing the coverage of items and services related to COVID-19, and (2) their on-going evaluation of their regulatory and policy options. Of course, the agencies recognize the importance of finality, and they will continue to work toward initiating the rulemaking as quickly as is possible consistent with resource limitations and prudent decision making.
10. Federal Defendants propose that the case remain stayed and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.
11. Plaintiffs have advised that they do not oppose keeping the litigation in its current posture.

DATED: April 27, 2022

Respectfully submitted,

BRIAN NETTER
Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Justin M. Sandberg
JUSTIN M. SANDBERG (Il. Bar No. 6278377)
Senior Trial Counsel
MICHAEL GERARDI
CHRISTOPHER R. HEALY
REBECCA M. KOPPLIN
DANIEL RIESS
Trial Attorneys
U.S. Dep't of Justice, Civil Div., Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20001
(202) 514-5838
Justin.Sandberg@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on April 27, 2022 a copy of the forgoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 27th day April, 2022.

s/Justin M. Sandberg
JUSTIN M. SANDBERG
Senior Trial Counsel
Unite States Department of Justice